

APR 10 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

JAMES WILLIAM MATTHEWS,

Petitioner - Appellant,

v.

EDWARD J. SULLIVAN,

Respondent - Appellee.

No. 04-56727

D.C. No. CV-04-04967-JVS

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
James V. Selna, District Judge, Presiding

Submitted April 5, 2006^{**}

Before: HAWKINS, McKEOWN, and PAEZ, Circuit Judges.

James William Matthews, a California state prisoner, appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 petition. We have jurisdiction pursuant to 28 U.S.C. § 2253, and we reverse and remand.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Matthews successfully contends, and the state concedes, that the district court erred by dismissing his mixed § 2254 petition without first affording him an opportunity to delete unexhausted claims. *See Jefferson v. Budge*, 419 F.3d 1013, 1014, 1016 (9th Cir. 2005) (“[I]t is error for a district court to dismiss a mixed habeas petition without first offering the petitioner the options provided in *Rose v. Lundy*, 455 U.S. 509 (1982).”); *see also Rhines v. Weber*, 125 S. Ct. 1528, 1535 (2005) (“[I]f a petitioner presents a district court with a mixed petition ...the court should allow the petitioner to delete the unexhausted claims and to proceed with the exhausted claims if dismissal of the entire petition would unreasonably impair the petitioner's right to habeas relief.”).

Accordingly, we reverse the district court’s judgment dismissing Matthews’ habeas petition and remand so that Matthews may be provided with an opportunity to exercise his options under *Rose*.

Appellant’s uncertified issues in his opening brief are construed as a motion to broaden the certificate of appealability. *See* 9th Cir. R. 22-1(e). We deny the motion.

REVERSED and REMANDED.